IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 830

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND HUGH L. RUTLEDGE,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

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Reply to Brief for the United States in opposition

I

The Government, respondent herein, in its Opposition to petitioners' Petition for writ of certiorari, argues that the unlawful acts of Rutledge, Secretary-Treasurer of Local 55, in allegedly disregarding the injunctive orders of the District Court can be attributed to Petitioner International Brotherhood and the International made criminally responsible for such actions because the Local Union of which Rutledge was Secretary-Treasurer had been placed in trusteeship by the International under a trustee who acted as the direct agent of the International, which trustee, in turn, had appointed Rutledge as his agent. There is no predicate in the record for a trusteeship theory of liability.[1] However, even though it be assumed that Local 55 was in trusteeship under the direct supervision of International Trustee Bell, who, in turn had appointed Rutledge as his agent, this standing alone would provide no basis for imposing criminal liability upon the International for the

unlawful acts of Rutledge. At the most, trusteeship would indicate an agency relationship between the International and the trustee, and, in turn, between the trustee and Rutledge, but there still would remain the necessity for showing by clear proof that the International actually participated in or authorized or ratified the unlawful acts of Rutledge even though Rutledge be considered an agent of the International. Section 6 of the Norris-LaGuardia Act is very explicit in stating that no association or organization shall be held responsible "for the unlawful acts of individual . . . *agents*, except upon clear proof of actual participation in or actual authorization of such acts or ratification of such acts after actual knowledge thereof." The Government and the courts below assumed that once an agency between Rutledge and the International was established that this ended the matter insofar as the International's criminal responsibility was concerned, for the reason, as stated by the trial court, that the "acts or deeds [of Rutledge] would be the acts and deeds of the Internanational Brotherhood." See Petition, page 14. But this forgets the whole premise of Congress and its reason for enacting Section 6 of the Norris-LaGuardia Act, namely that criminal guilt is a personal matter so that the unlawful acts of an agent can be imputed to a principal only upon a clear showing of participation in or ratification of such unlawful acts by the principal. The quotation from the Report of the Senate Committee set forth by this Court in the Carpenter case (*United Brotherhood* v. *U. S.*, 330 *U.S.*

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[1] The court below held the International criminally responsible without reference to the alleged trusteeship; the trusteeship was referred to only collaterally. Furthermore, there was no competent evidence in the record of the existence of any trusteeship. The "evidence" relied upon below consisted solely of the statements of the alleged agent Rutledge himself —clearly inadmissable unless Rutledge was in fact and in law an agent— and such statements were held admissible only under the erroneous conclusion that agency had been established by reference to the constitution of the International Union. See Petition herein, page 7, Footnote 2.

395); as well as the underlying rationale of this Court in that case plainly so indicates.[2] Accordingly, even though it be conceded that Rutledge, at the time he engaged in the unlawful acts which were the basis of the criminal contempt proceedings against him, was an agent of the International, it must furthermore be shown that the International had *actually* participated in, authorized or ratified such unlawful acts, and had actual knowledge of such acts.

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[2] In the Carpenters case this Court quoted from the Senate Report and held as follows: 330 U.S. at 405, 406:

"But the argument is made that a man is held legally responsible for the acts of his agents taken in due course of employment. This argument is evidently based upon a doctrine of the civil law of negligence. It has no application to the criminal law. If a man is held responsible for an unlawful act, his responsibility rests on the basis of actual or implied participation. He is responsible for conspiring to do an unlawful act or for setting in motion forces intended to result, or necessarily resulting, in an unlawful act. . . . it is high time that, by legislative action, the courts should be required to uphold the long established law that guilt is personal and that men can only be held responsible for the unlawful acts of associates because of participation in, authorization or ratification of such acts. As a rule of evidence, clear proof should be required, so that criminal guilt and criminal responsibility should not be imputed but proven beyond reasonable doubt in order to impose liability.

"We hold, therefore, that 'authorization' as used in Section 6 means something different from corporate criminal responsibility for the acts of officers and agents in the course or scope of employment. We are of the opinion that the requirement of 'authorization' restricts the responsibility or liability in labor disputes of employer or employee associations, organizations or their members for unlawful acts of the officers or members of those associations or organizations, although such officers or members are acting within the scope of their general authority as such officers or members, to those associations, organizations or their officers or members who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type and quality, had been expressly authorized, or necessarily followed from a granted authority, by the association or non-participating member sought to be charged or was subsequently ratified by such association, organization or member after actual knowledge of its occurrence."

and the jury should have been so advised. Thus there is no merit in the argument that, either by virtue of the trusteeship or by virtue of the alleged control exercised by the International over the Local under the provisions of the International Constitution, there was sufficient evidence to impute criminal responsibility to the International for the acts of Rutledge. General control by the International over the activities of Local 55 and its Secretary-Treasurer Rutledge, either through the powers imposed in the International under its Constitution or through the powers imposed in the International under the trusteeship, cannot constitute actual participation in or authorization of specific unlawful acts if the safeguards of Section 6 of the Norris-LaGuardia Act are to have any meaning. While an abstract, potential or general ability by the International to control the acts of others may be relevant to established agency, it cannot be sufficient to establish the personal participation and personal guilt of the International required by Section of the Norris-LaGuardia Act unless it is shown that that control was in fact exercised to direct or accomplish the specific unlawful acts of the individual agent. All international unions exercise similar or comparable general controls over their local union affiliates, and therefore on the government's theory could similarly be held criminally responsible for the unlawful acts of any one of many thousands of individual local union officers. But a reading of the Carpenters case, supra, indicates that, in the criminal area, this guilt by imputation is precisely what Congress sought to prevent in enacting Section 6 of the Norris-LaGuardia Act.

II

The Government argues, however, (Opposition, p. 11), that in addition to the general control over Local 55 and Rutledge exercised by the International under the trusteeship or by virtue of the provisions of the International's Constitution, there was "substantial evidence of Rutledge's

authority to act for the International" because the record showed that at the time of Rutledge's alleged interference with the injunctive decree against the four carriers in the Charlotte area, there was in effect a multi-state boycott against and a refusal to handle freight of Overnite Transport participated and engaged in by numerous other local unions affiliated with the International, so that the International must be presumed to have knowledge of and to have authorized the refusal, or at least to have afforded sufficient basis to warrant the jury in concluding that the International had such knowledge or had authorized or participated in the multi-state boycott by numerous of its local union affiliates, including Local 55. Even assuming that knowledge of and participation in such multi-state boycott by the International can be thus inferred absent any actual proof of actual participation, this would prove nothing except that the International participated in a general boycott against Overnite. It would not prove or constitute evidence of participation in or knowledge by the International of the particular activities of Rutledge in allegedly disregarding the injunction against the four carriers who interlined with Overnite in the Charlotte area. The injunctive decree which Rutledge allegedly violated was not one enjoining the general multi-state boycott against Overnite—indeed, as we have seen, Petition page 18, it could not have been—but rather it was a limited decree requiring only that four carriers in the Charlotte area interline Overnite's freight. It is this latter narrow decree, not one directed against the general boycott, which Rutledge was found to have violated. Thus, even assuming there was proof that the International had participated in or authorized the general multi-state boycott against Overnite, this could not constitute proof or even the basis for an inference that the International had authorized the individual unlawful acts of one of the representatives of one of the many local unions that were engaged in the general boycott. Yet it is this evidence of possible

participation in the general boycott by the International which alone was pointed to by the court below and by the Government in its opposition as warranting a finding that the International had knowledge of or had participated in the violation of the injunctive decree involving Overnite and four of its connecting carriers. Indeed, there was no showing or attempt to show that any of the International's responsible directing administrative or executive officers, or even the Trustee, was aware of the injunction obtained by Overnite against the four carriers, let alone with such knowledge had directed or authorized Rutledge to do as he did. Once again it is clear that there is no evidence whatsoever in the record which can support a finding of personal criminal responsibility in the International, and we have seen that Section 6 of the Norris-LaGuardia Act was enacted to prevent this type of general imputation of guilt in criminal matters. For this reason, it was clear error for the District Court to deny Petitioners' requested motion for a directed verdict, or, since the motion was denied, to fail to make clear to the jury that Rutledge's unlawful actions cannot in and/of themselves be attributed to the International for purposes of criminal conviction, even though the jury might have been satisfied that Rutledge stood in some sort of an agency relationship to the International.

III

The Government argues, however, that the trial court in substance charged the jury to the same effect as Section 6 of the Norris-LaGuardia Act. In the Carpenter's case the jury had been charged that "conscious participation" was required for conviction, and this was held an insufficient substitute for the express and clear language of Section 6. (330 U.S. at 411). Similarly, it is submitted that the general charge in the present case of willfulness and knowledge are not an adequate substitute, and this is particularly

true when the courts instructions to the jury are read in their entirety. See 2R 324-351. Throughout the case, see Petition page 14, the trial court gave the jury the distinct impression that any actions or activities of Rutledge could be directly attributed to the International—that "it [the conviction of the International] is all predicated upon the acts and deeds of Rutledge," and nowhere was it made clear to the jury that even if Rutledge were found to be the agent of the International, the International could not be convicted unless *in addition* the jury was satisfied that the International had actual knowledge of or had actually participated in or authorized Rutledge's disregard of the injunctive decree involving Overnite and the four carriers. And while the trial court did give the instructions requested by the defendants, it characterized them as simply "repetitious of what I have thus far said" (2R 345), and in other portions of its instructions, and throughout the trial, the district court charged the jury to the effect that the International could act only through its agents, and if Rutledge was deemed to be an agent of the International the International would be responsible for the acts of that agent. See 2R 345, 350 and Petition p. 6 and 14. Had the jury been properly instructed it could not possibly have found the International criminally responsible for Rutledge's activities in connection with the injunction obtained by Overnite against four of its connecting carriers. Having refused to direct a verdict of acquittal, the judge should have properly instructed the jury under Section 6 of the Norris-LaGuardia Act. Failing to do so, the conviction as to the International must be reversed under the authority of the Carpenter's case.

IV

The Government appears to suggest but does not urge that because Petitioners had failed to specifically request instructions in the language of Section 6 of the Norris-

LaGuardia Act, and had failed to except to the failure of the court to instruct the jury as per the requirements of Section 6 of the Norris-LaGuardia Act, they, therefore, either have no standing to object or that their failure removes the necessity for proper instructions. But the Carpenter's case makes clear that in criminal case involving labor disputes the jury must be properly instructed if valid convictions are to result, and that labor union defendants in labor dispute cases, as well as employer defendants in such cases, are entitled as a matter of right and as a matter of law to appropriate instructions under Section 6 of the Norris-LaGuardia Act. In the Carpenters case the employer defendants had failed both to request proper instructions or to except to the court's failure to give proper instructions, but, nevertheless, their conviction was reversed. In the Carpenters case the court stated as follows (330 U.S. at 408 and 411):

> No matter how strong the evidence may be of an association's or organization's participation through its agents in the conspiracy, there must be a charge to the jury setting out correctly the limited liability under Section 6 of such association or organization for acts of its agents. For a judge may not direct a verdict of guilty no matter how conclusive the evidence. There is no way of knowing here whether the jury's verdict was based on facts within the condemned instructions, note 19 above, or on actual authorization or ratification of such acts, note 18. A failure to charge correctly is not harmless, since the verdict might have resulted from the incorrect instruction. We are of the opinion, therefore, that the judge should have instructed the jury as to the limitations upon the association's liability for the acts of its agents under Section 6 the error is aggravated by the failure to give the correct charge upon request.
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> Each of the employer petitioners, if they had stood

trial, as we have indicated hereinbefore, would have been entitled to the same instruction under Section 6 as we have held the union group should have received. And though the failure so to charge was not excepted to, we would not be precluded from entertaining the objection. The erroneous charge was on a vital phase of the case and affected the substantial rights of the defendants. We have the power to notice a "plain error" though it is not assigned or specified.

V

The Government implies (Brief in Opposition, page 12) that the present case is not one in which a union is "participating or interested in a labor dispute," so that Section 6 of the Norris-LaGuardia Act is inapplicable. Rather, says the Government, the present offense was one against the United States District Court and involving only that court. But the Government's own statement of the facts of this case as well as the record indicates conclusively that this whole proceeding arose out of and involves a labor dispute, and indeed the injunction which was violated was one obtained in the course of and because of a labor dispute. To say that a violation of an injunctive decree issued in the framework and under a background of a continuing labor dispute involves solely a crime against the Federal judge who issued the injunctive order and, therefore, is not cognizable under Section 6 of the Norris-LaGuardia Act is to permit the very type of abuse which the Norris-LaGuardia Act was designed to prevent. The era preceding passage of Norris-LaGuardia and which gave rise to it is replete with instances similar to the present where labor unions and their representatives were made the victims of injunctions obtained in friendly proceedings brought between employers involved in labor disputes for the purpose of curtailing the exercise of otherwise lawful union activities. The present case is an excellent example;

here by the device of a suit by Overnite against four connecting carriers the right of unions to seek to obtain enforcement of their struck goods or hot cargo clauses were collaterally subverted when they could not have subverted by direct application for injunction by Overnite against the union. In the Carpenters case the union was found to be participating or interested in a labor dispute merely on the basis of the fact that it was party to a contract with an employer which contained a clause which was alleged to be contrary to the anti-trust laws; no actual strike, picketing, or boycott was in effect as is the case in the instant proceeding. If Section 6 of the Norris-LaGuardia Act is not applicable in this case, it is difficult to comprehend how the protections afforded thereunder could be applicable anywhere.

It is respectfully submitted that the Court of Appeals below has decided a Federal question of substance and widespread implication in conflict with applicable decisions of this Court, particularly the decision of this Court, in the Carpenters case, and that, therefore, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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